

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ULYSSES ALEXANDER RIOS,

Petitioner,

v.

S. FRAUENHEIM, Warden,

Respondent.

Case No. 15-cv-01357 BLF (PR)

**ORDER GRANTING MOTION TO
REOPEN ACTION; LIFTING STAY;
DIRECTING RESPONDENT TO
SHOW CAUSE**

(Docket No. 35)

Petitioner, a state prisoner proceeding *pro se*, filed a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction out of Santa Clara County. The Court denied Respondent's motion to dismiss and granted Petitioner's motion to stay the instant action under *Kelly v. v. Small*, 315 F.3d 1063 (9th Cir. 2003), while he exhausted an unexhausted claim regarding ineffective assistance of appellate counsel. (Docket Nos. 21, 29.) Petitioner was directed to notify the Court within twenty-eight days of the California Supreme Court's decision denying him relief to reopen this action by filing a motion to reopen this action. (Docket No. 29 at 2.)

Petitioner has filed a motion to reopen this action and a second amended petition. (Docket No. 35.) Good cause appearing, the motion will be granted and the stay lifted.

Petitioner also requests an evidentiary hearing, (*id.* at 1), which is DENIED as premature.

Petitioner asserts the following claims for federal habeas relief: (1) ineffective assistance of counsel; and (2) ineffective assistance by appellate counsel. (Docket No. 35 at 5-6.) Liberally construed, these claims are cognizable and merit an answer from Respondent.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Good cause appearing, Petitioner's motion to reopen this action is **GRANTED**. (Docket No. 35.) The stay is hereby **LIFTED**. The Clerk shall reopen the case.

2. Respondent shall file with the court and serve on Petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued based on claim presented in the second amended petition. (Docket No. 35.) Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondent within **thirty (30) days** of his receipt of the answer.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement of non-opposition within **twenty-eight (28) days** of receipt of the motion, and Respondent shall file with the court and serve


on Petitioner a reply within **fourteen (14) days** of receipt of any opposition.

4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded that all communications with the Court must be served on Respondent by mailing a true copy of the document to Respondent's counsel. Petitioner must keep the Court and all parties informed of any change of address by filing a separate paper captioned "Notice of Change of Address." He must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

This order terminates Docket No. 35.

IT IS SO ORDERED.

DATED: March 6, 2020


BETH LABSON FREEMAN
United States District Judge